

**Supporting Statement for the  
Recordkeeping and Disclosure Requirements Associated with Loans Secured by  
Real Estate Located in Flood Hazard Areas Pursuant to Section 208.25 of  
Regulation H (Reg H-2; OMB No. 7100-0280)**

**Summary**

The Board of Governors of the Federal Reserve System, under delegated authority from the Office of Management and Budget (OMB), proposes to extend for three years, with revision, the Recordkeeping and Disclosure Requirements Associated with Loans Secured by Real Estate Located in Flood Hazard Areas Pursuant to Section 208.25 of Regulation H (Reg H-2; OMB 7100-0280). The Paperwork Reduction Act (PRA) classifies recordkeeping or disclosure requirements of a regulation as an information collection. The Federal Reserve proposes to revise, the recordkeeping and disclosure requirements of Regulation H for loans secured by improved property in areas having special flood hazards.<sup>1</sup> Although state member banks have been required to comply with Section 208.25 of Regulation H for some time, the current information collection does not include disclosures related to ensuring maintenance of flood insurance over the life of these loans. The Federal Reserve proposes to revise the information collection to account for this statutory requirement.

In general, the Flood Act and Regulation H provide that a lender shall not make, increase, extend, or renew a loan secured by a building or mobile home located in a special flood hazard area unless the secured property is covered by flood insurance for the term of the loan. With respect to the recordkeeping and disclosure provisions, the regulation requires state member banks to:

- retain a completed copy of the Standard Flood Hazard Determination Form developed by the Federal Emergency Management Agency (standard FEMA form). The form is used by lenders to document their determination of whether improved property securing a loan is in a special flood hazard area;
- notify a borrower and servicer when loans secured by improved property are determined to be in a special flood hazard area and notify them whether flood insurance is available;
- notify a borrower whose mandated flood insurance policy has expired of the borrower's obligation to obtain flood insurance. If the borrower fails to obtain the flood insurance within 45 days of this notification, the state member bank or its servicer must purchase insurance and charge the borrower for the cost of the premiums; and,
- notify the Federal Emergency Management Agency (FEMA) of the identity of, and any change in, the servicer of a loan secured by improved property in a special flood hazard area.

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<sup>1</sup> A special flood hazard area is defined by Regulation H as land in the flood plain within a community having at least a 1 percent chance of flooding in any given year, as designated by FEMA.

The information collection requirements under the flood hazard provisions of Regulation H are triggered by specific events in the lending process. The 824 state member banks supervised by the Federal Reserve are deemed “respondents” that must comply with these Regulation H requirements. The total current annual burden associated with these requirements is estimated to be 28,840 hours for the 824 state member banks.<sup>2</sup> The Federal Reserve estimates that the proposed revisions would increase the annual burden by 3,364 hours to 32,204 hours.

## **Background and Justification**

Section 208.25 of Regulation H implements provisions of the National Flood Insurance Act of 1968 (1968 Act) and the Flood Disaster Protection Act of 1973 (1973 Act), as amended by the National Flood Insurance Reform Act of 1994 (1994 Reform Act).

The 1968 Act made federally subsidized flood insurance available to owners of improved real estate or mobile homes located in special flood hazard areas if their community participates in the National Flood Insurance Program (NFIP). A special flood hazard area is an area within a floodplain having a 1 percent or greater chance of flooding in any given year. These areas are delineated on maps FEMA issues for individual communities. A community establishes its eligibility to participate in the NFIP by adopting and enforcing floodplain management measures to regulate new construction and by making substantial improvements within its special flood hazard areas to eliminate or minimize future flood damage.

The 1973 Act amended the NFIP by requiring each federal agency responsible for the supervision, approval, regulation, or insuring of banks, savings and loan associations, or similar institutions to issue regulations to implement its provisions. Under these regulations, lenders must require flood insurance on improved real estate or mobile homes serving as collateral for a loan if the property is located in a special flood hazard area in a participating community. To implement statutory amendments enacted in 1974, the regulations required lenders to notify borrowers that property is located in a special flood hazard area and that federal disaster assistance is available in the event of a flood.

The 1994 Reform Act comprehensively revised the federal flood insurance statutes with the intention of increasing compliance with the flood insurance requirements and increasing participation in the NFIP. The revisions were designed to provide additional income to the National Flood Insurance Fund and to decrease the financial burden of flooding on the federal government, taxpayers, and flood victims. The 1994 Reform Act specifically required the federal financial regulatory agencies to amend their regulations<sup>3</sup> and require lenders to:<sup>4</sup>

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<sup>2</sup> While FEMA is responsible for accounting for the paperwork burden associated with lenders’ *completion* of the standard FEMA form, the Federal Reserve and other depository institution supervisory agencies account for the paperwork burden associated with the disclosure and recordkeeping requirements.

<sup>3</sup> The 1994 Reform Act was implemented through a joint final rule by the Board, the Office of the Comptroller of the Currency, Federal Deposit Insurance Corporation, Office of Thrift Supervision, National Credit Union Administration, and Farm Credit Administration.

<sup>4</sup> Pursuant to Section 208.25(d) of Regulation H, the flood insurance requirement does not apply to: (1) any state-

- use the standard form created by FEMA to determine whether property securing a loan is in a special flood hazard area;<sup>5</sup>
- notify borrowers and servicers when loans are secured by property in special flood hazard areas; and
- notify FEMA of the identity of, and any change in, the servicer of a loan.

## **Description of Information Collection**

The information collection requirements under the Regulation H flood insurance are as follows:

### **Recordkeeping Requirement - Records of compliance (Section 208.25(f)(2))**

Regulation H requires a state member bank to retain a copy of the completed FEMA standard flood hazard determination form. The records, which may be retained in hard copy or electronic form, must be kept for the entire period of time that the bank owns the loan.

### **Disclosure Requirement - Notice of special flood hazards and availability of federal disaster relief assistance (Section 208.25(i))**

When a state member bank makes, increases, extends, or renews a loan secured by a building or a mobile home located or to be located in a special flood hazard area, Regulation H requires that the bank mail or deliver a written notice to the borrower and to the servicer in all cases, indicating whether flood insurance is available under the NFIP for the collateral securing the loan. Specifically, the contents of the notice must include:

- a warning that the building or mobile home is or will be located in a special flood hazard area;
- a description of the flood insurance purchase requirements;
- a statement, where applicable, that flood insurance coverage is available under the NFIP and may also be available from private insurers; and,
- a statement whether federal disaster relief assistance may be available in the event of damage to the building or mobile home caused by flooding in a federally declared disaster.

Notice to the servicer may be made electronically or may take the form of a copy of the notice to the borrower.

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owned property covered under a policy of self-insurance satisfactory to the director of FEMA, who publishes and periodically revises the list of states falling within this exemption; and (2) property securing any loan with an original principal balance of \$5,000 or less and a repayment term of one year or less.

<sup>5</sup> Section 528 of the 1994 Reform Act directed FEMA to develop a standard form for determining whether a property is located in an area that FEMA has identified as one having special flood hazards and in which flood insurance under 44 CFR 65 is available. Section 528 also requires the Board and other regulatory agencies to require, by regulation, the use of the standard FEMA form. The Board adopted paragraph 208.25(f) of Regulation H to require state member banks to use and retain the standard form developed by FEMA when making their flood hazard area determination.

### **Disclosure Requirement – Forced placement of flood insurance (Section 208.25(g))**

When a state member bank determines, during the term of a loan secured by property located in a special flood hazard area, that the property is not adequately covered by flood insurance, the bank is required to notify the borrower that the borrower should obtain flood insurance at the borrower's expense. If the borrower fails to obtain flood insurance within 45 days after this notification, then the bank must purchase insurance on the borrower's behalf and charge the borrower for the insurance.

### **Disclosure Requirement - Notices to FEMA of servicer and change in servicer (Section 208.25(j)(1) and (2))**

When a state member bank makes, increases, extends, renews, sells, or transfers a loan secured by a building or mobile home located or to be located in a special flood hazard area, Regulation H requires the bank to notify the director of FEMA (or the director's designee) in writing of the identity of the servicer of the loan. The regulation also requires a state member bank to notify the Director of FEMA (or the Director's designee) of any change in the servicer of a loan. (The Director of FEMA has designated the insurance provider to receive the member bank's notice of servicer's identity.) These notices may be provided electronically if electronic transmission is satisfactory to the Director of FEMA's designee.

### **Time Schedule for Information Collection**

The recordkeeping and disclosure requirements of Regulation H that are imposed on state member banks are triggered by specific events in the lending process. The records are maintained at the state member banks and are not provided to the Federal Reserve. Regulation H requires that the notice of special flood hazards be mailed or delivered to (1) the borrower "within a reasonable time" before completion of the transaction and (2) to the servicer "as promptly as practicable" after the bank provides notice to the borrower and in any event no later than the time the bank provides other similar notices to the servicer concerning hazard insurance and taxes (Section 208.25(i)(2)). In addition, Regulation H requires that the notice of change of servicer must be made within sixty days after the effective date of the change (Section 208.25(j)(2)).

### **Legal Status**

The Board's Legal Division has determined that the Board is authorized to impose the Regulation H requirements pursuant to Section 102 of the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. § 4012a) and Section 1364 of the National Flood Insurance Act of 1968, as amended (42 U.S.C. § 4104a). The obligation of state member banks to comply with the Regulation H requirements is mandatory. Because the Federal Reserve does not collect any information, no issue of confidentiality would normally arise. However, should the records required by the Regulation H requirements come into possession of the Board during an examination of a state member bank, those records

would be protected from disclosure by exemption 8 of the Freedom of Information Act (FOIA). (5 U.S.C. § 552(b)(8)).

### **Consultation Outside the Agency**

For the renewal of this information collection, the Federal Reserve consulted with the Office of the Controller of the Currency (OCC) and the Federal Deposit Insurance Corporation (FDIC). As required by the Flood Disaster Protection Act of 1973, these agencies have adopted substantially similar flood insurance regulations for the financial institutions they supervise.

On September 19, 2011, the Federal Reserve published a notice in the *Federal Register* (76 FR 58003) requesting public comment for 60 days on the extension, with revision, of this information collection. The comment period for this notice expired on November 18, 2011. The Federal Reserve did not receive any comments. On December 2, 2011, the Federal Reserve published a final notice in the *Federal Register* (76 FR 75547).

### **Sensitive Questions**

This collection of information contains no questions of a sensitive nature, as defined by OMB guidelines.

### **Estimate of Respondent Burden**

The table below displays the burden estimates associated with both the current and proposed Recordkeeping and Disclosures requirements of Regulation H. The proposed section of the table includes information collections associated with the requirements of lenders to ensure flood insurance is maintained over the life of certain loans (secured by properties located in special flood hazard areas). Inclusion of these additional requirements more accurately reflects respondent burden associated with Regulation H. The total current annual burden for this information collection is estimated to be 28,840 hours. With the proposed revisions the total annual burden is estimated to increase by 3,364 hours to 32,204 hours.

The Federal Reserve has estimated, using as a proxy the Home Mortgage Disclosure Act (HMDA) data for 2009, that the 496 HMDA-reporting state member banks make approximately 685 loans that are secured by real estate per year. The Federal Reserve estimates that the 328 non-HMDA reporting state member banks make approximately 20 loans that are secured by real estate per year. For each of these loans, the state member banks must comply with the recordkeeping requirement by retaining a copy of the standard FEMA form used to determine if a loan is secured by property located in a special flood hazard area.

The amounts in the following table reflect the burden estimated by the Federal Reserve System for the state member banks under its supervision. These recordkeeping and disclosure requirements represent less than 1 percent of total Federal Reserve System paperwork burden.

	<i>Number of respondents</i>	<i>Estimated annual frequency</i>	<i>Estimated average time per response</i>	<i>Estimated annual burden hours</i>
<b><i>Current</i></b>				
<i>Recordkeeping</i>				
Retention of standard FEMA form	824	420	2.5 minutes	14,420
<i>Disclosures</i>				
Notice of special flood hazards to borrowers and servicers	824	84	5 minutes	5,768
Notice to FEMA of servicer	824	84	5 minutes	5,768
Notice to FEMA of change of servicer	824	42	5 minutes	<u>2,884</u>
<i>Total</i>				28,840
<b><i>Proposed</i></b>				
<i>Recordkeeping</i>				
Retention of standard FEMA form	824	420	2.5 minutes	14,420
<i>Disclosures</i>				
Notice of special flood hazards to borrowers and servicers	824	84	5 minutes	5,768
Notice to FEMA of servicer	824	84	5 minutes	5,768
Notice to FEMA of change of servicer	824	42	5 minutes	2,884
Notice to borrowers of lapsed mandated flood insurance	824	17	5 minutes	1,167
Purchase of flood insurance on the borrower's behalf	824	4	15 minutes	824
Notice to borrowers of lapsed mandated flood insurance due to remapping	824	8	5 minutes	549
Purchase of flood insurance on the borrower's behalf due to remapping	824	4	15 minutes	<u>824</u>
<i>Total</i>				32,204
<i>Change</i>				3,364

With the proposed revisions the total cost to the public is estimated to increase by \$145,998 from \$1,251,656 to \$1,397,654.<sup>6</sup>

<sup>6</sup> Total cost to the public was estimated using the following formula: percent of staff time, multiplied by annual burden hours, multiplied by hourly rate (30% Office & Administrative Support @ \$16, 45% Financial Managers @ \$50, 15% Legal Counsel @ \$54, and 10% Chief Executives @ \$80). Hourly rate for each occupational group are the median hourly wages (rounded up) from the Bureau of Labor and

## **Estimate of Cost to the Federal Reserve System**

Since the Federal Reserve does not collect any information, the cost to the Federal Reserve System is negligible.